

City of Portland, OR—NPDES MS4 Permit # 101314

Response to EPA Section 8 Information Request dated January 23, 2014Submitted April 30, 2014

QUESTION 5

On page 6 of the *Spill Protection and Citizen Response Duty Officer Procedures*, it is stated that procedures for the inspection and sampling of dry weather outfalls are not included in this document. Does the City MS4 program have a written dry weather monitoring procedure? If so, provide a copy of this procedure. If not, provide any documentation that describes or supports dry weather monitoring investigation, elimination, and enforcement.

The City has written *Discharge Detection and Elimination (IDDE) Procedures* and *Stormwater System Enforcement Procedures*, which are attached.

City of Portland
Bureau of Environmental Services

Spill Protection and Citizen Response (SPCR)

**ILLICIT DISCHARGE DETECTION AND
ELIMINATION (IDDE) PROCEDURES**

January 2014

Contents

	Page
Section I PURPOSE AND SCOPE	1
Section II MONITORING AND INVESTIGATION	1
A. Outfall Field Monitoring and Analysis	1
B. Sampling for Laboratory Analysis	2
C. Follow-up Sampling and Source Investigation	2
Section III CONTAINMENT AND CLEANUP	7
A. Stopping the Discharge	7
B. Initiating Cleanup	9
C. Determining the Cleanup Lead	9
Section IV ENFORCEMENT	11
Section V FOLLOW-UP DISCUSSION	11

I. PURPOSE AND SCOPE

The Bureau of Environmental Services (BES) Spill Protection and Citizen Response (SPCR) Section is responsible for investigating and responding to illicit discharges that enter, threaten, or discharge from the City of Portland's sewer system.

The **Illicit Discharge Detection and Elimination (IDDE)** is a program managed by SPCR. IDDE inspects and conducts sampling at selected stormwater outfalls during the dry weather season (typically June through September) to detect illicit connections and illegal discharges to the City's Municipal Separate Storm Sewer System (MS4). IDDE has two primary objectives:

- Discover and correct improper or illegal industrial, commercial, and residential sewer connections to the City of Portland stormwater sewer system.
- Identify and eliminate illegal discharges, including industrial wastes, that enter the stormwater sewer system.

The following text describes IDDE procedures.

Note: SPCR also receives complaints/ referrals about illicit discharges to the City's stormwater, UIC, sanitary, and combined sewer systems, primarily via a 24-hour Spill Response Hotline. SPCR staff members (during normal business hours) and on-call BES duty officers (outside of normal business hours) monitor the hotline and respond to the complaints/referrals. The procedures for the Duty Officer/Spill Response program are described in SPCR's *Duty Officer Procedures* manual (2013; revised 2014).

II. MONITORING AND INVESTIGATION

A. Outfall Field Monitoring and Analysis

IDDE monitors all MS4 major outfalls (also called major stormwater outfalls) once a year and all MS4 priority outfalls three times a year.¹ When there is sufficient flow at an outfall, the IDDE investigator takes the following actions to obtain timely information and determine if further action is needed.

- Field observations, including flow, floatable matter, color, and odor.
- Chemical analysis with a portable field laboratory of eight analytes. Action levels for these analytes are included in the Outfall Inspection Form used by IDDE to record field inspection results (see page 3). [Eleven analytes and action levels were identified in the *Illicit Discharge Detection and Elimination Action Levels* document the City submitted to the Oregon Department of Environmental Quality in 2011, in accordance with permit requirements. The

¹ Major outfalls and priority outfalls are defined in Portland's NPDES MS4 permit #101314, dated January 31, 2011.

City is currently reviewing the analytes and will be submitting a revised document, with the eight analytes, to DEQ in 2014.]

Note: Other work groups within BES also occasionally discover illicit connections and illegal discharges to the MS4. When this occurs, it is reported to the SPCR group. The IDDE program leads the investigation, following the IDDE protocol.

B. Sampling for Laboratory Analysis

If the field observations or field chemical analysis results indicate a possible illicit discharge, the IDDE investigator uses the IDDE Flow Chart (see page 5) to determine the appropriate sampling method for laboratory analysis. Sampling is conducted at both the outfall and upstream. Samples are taken to the BES Water Pollution Control Laboratory (WPCL) for analysis.

The laboratory results are entered into the WPCL's LIMS database. The WPCL sends the results to the IDDE investigator, who enters them into a tracking spreadsheet. If the results confirm elevated levels of E. coli, metals, or other pollutants of concern, IDDE initiates a follow-up investigation. IDDE notifies MS4 Program staff of the illicit discharge, as well as any other City programs that will be impacted.

C. Follow-up Sampling and Source Investigation

To initiate the follow-up investigation, a process meeting is held with IDDE, the SPCR Program Manager, and a representative from the MS4 Program. (This may also be done via email.) MS4 Program staff produce maps with the drainage basins, pipe systems, and zoning information. The process meeting establishes which actions to take and who is responsible for the needed tasks.

The follow-up investigation always includes additional sampling within three working days. The process meeting establishes the amount and location of the samples to be taken. It also determines whether additional sampling help is needed (e.g., from Field Operations) to obtain the samples when confined space entry is required or areas are difficult to access.

IDDE typically takes follow-up samples at the outfall, upstream of the outfall, and at the suspected illicit discharge location. The samples are taken to the WPCL for analysis, and the results are entered into LIMS and the tracking spreadsheet.

IDDE provides all sample results to MS4 Program staff and, if appropriate, the Industrial Stormwater Permitting group and/or Portland Superfund Harbor group.

- ➔ If the follow-up sampling results still show elevated pollutant levels, IDDE works with the MS4 Program to investigate the source of the illicit discharge.
- ➔ If the follow-up sampling results do not show elevated pollutant levels, IDDE does not conduct further investigations at that time. IDDE flags the record of the initial sampling for future monitoring at the location and for consideration of whether the outfall should be added to the priority outfall list.

City of Portland
Illicit Discharge Detection and Elimination (IDDE)
Program
Outfall Inspection Form

GENERAL INFORMATION

Outfall ID _____ Monitoring Location _____

Date _____ Time _____

SITE DESCRIPTION

Receiving water: **Willamette River** **Columbia Slough** **Johnson Creek** **Columbia River**Dominant land use: **Commercial/Industrial** **Residential**Sample / Inspection point: **Outfall** **Manhole**Flow observation: **Yes** **No** **Outfall submerged** **Manhole standing water**

FIELD ANALYSIS

pH (<5; >9) _____ Ammonia (05) (>0.5) _____ mg/L

Temperature (>18) ____ °C Potassium (83) (>10) _____ mg/L

Conductivity (>500 µS/cm) _____ µS/cm Hardness (43) (20) _____ mg/L

Turbidity (98) (10 NTU) _____ FAU

Residual chlorine (14) (> 0.1) _____ mg/L

LAB ANALYSIS

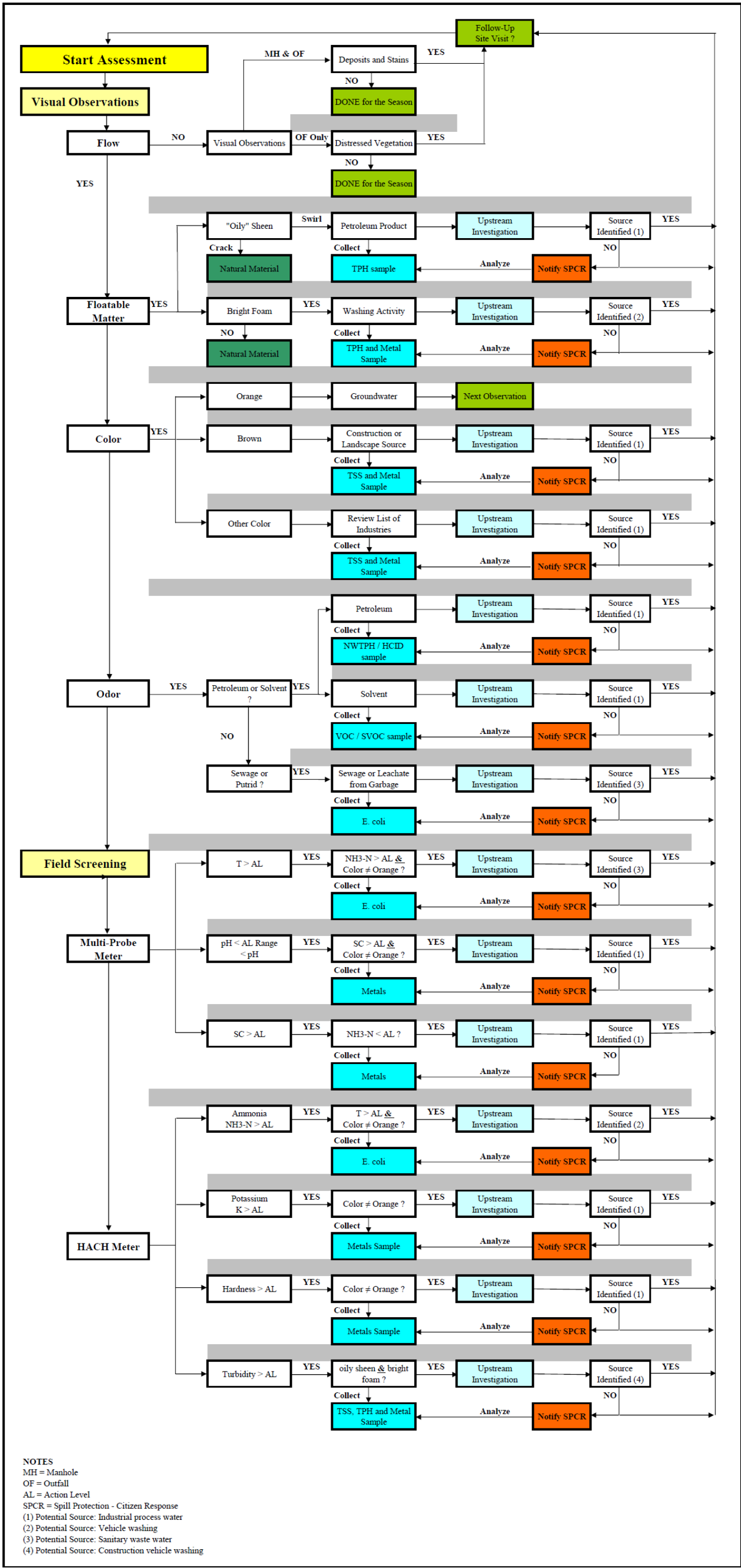
☐ E. coli (>1,000) _____ MPN per 100 mL☐ Total Metals (ICP)
Cu _____ µg/L Pb _____ µg/L Zn _____ µg/L

UPSTREAM INVESTIGATION

Location

_____Comments / Actions taken

IDDE Flow Chart



IDDE leads source investigations, which may include:

- Documentation investigations
 - Property records (as-builts, easements, ordinances)
 - Plumbing records
 - Work order information
 - Industries discharging to storm sewer in the basin
 - Existing permits (e.g., industrial pretreatment, 1200)
 - Sampling history of the basin
- Line video of the pipe(s) impacted
- Identification of property owner/responsible party

The MS4 Program, Industrial Stormwater Permitting, Portland Superfund Harbor, and Investigations & Monitoring groups may work with IDDE in the investigation, as appropriate. Investigation results are entered into the TRACs database.

III: CONTAINMENT AND CLEANUP

Once an illicit discharge source and responsible party are identified, IDDE takes the following steps to stop an ongoing discharge and initiate cleanup if warranted.

A. Stopping the Discharge

If the discharge is ongoing, the IDDE inspector directs the responsible party to contain/cease the discharge. The inspector fills out an Environmental Compliance Division Notice of Investigation form (see page 8) at the site to formally notify the responsible party that there is a potential violation and that additional enforcement may occur. This form also serves as a record of the communication.

Communication with the responsible party includes:

- Telling them the impact of the discharge.
- Offering to help them identify potential remedies for ceasing or containing it; giving multiple options whenever possible.
- Telling them the result that needs to be achieved, without dictating the specific action they should take.
- Informing them that they may be in violation of City Code; being as specific about potential liabilities, penalties, or violation as the situation warrants.

If the responsible party cannot or will not take needed actions to cease or contain the discharge, the City can take whatever actions it deems necessary to protect the City system. IDDE notifies the responsible party that the City can and will take action to recover all costs associated with any City action to prevent discharged materials from impacting City sewer and drainage systems.

Environmental Compliance Division Notice of Investigation



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
working for clean rivers



Environmental Services
Water Pollution Control Laboratory
6543 N Burlington Ave.
Portland, OR 97203

MORE INFORMATION:
503-823-7180
www.portlandoregon.gov/bes

Notice of investigation of potential violation of City Code and associated rules:

- ☐ 17.32 (Public Systems)
☐ 17.34 (Sanitary)
☐ 17.38 (Drainage)
☐ 17.39 (Storm)
☐ Title 10 (Erosion Control)

INCIDENT INFORMATION

Incident Date:	Date Reported:
Incident Time:	Response Date:
BES Investigator:	Phone:
Incident Location/Address:	
Facility Name: (if applicable)	
Name/Title of On-scene Contact:	Responsible Party (RP): <input type="checkbox"/> Yes <input type="checkbox"/> No
Responsible Party: (if known/different from above)	Phone:
	Email:

INVESTIGATION

REASON FOR INVESTIGATION: <input type="checkbox"/> Materials release and/or spill: _____ gals <input type="checkbox"/> Sewage release <input type="checkbox"/> Solid/Viscous materials blockage <input type="checkbox"/> Illicit connection <input type="checkbox"/> Erosion control and/or site run-off <input type="checkbox"/> Oily sheen <input type="checkbox"/> Noxious odor/gases <input type="checkbox"/> Other: _____	SYSTEM IMPACTED: (mark all that apply; note asset no. if known/applicable) <input type="checkbox"/> Sanitary/combined sewer: _____ <input type="checkbox"/> Storm sewer: _____ <input type="checkbox"/> Stormwater management facility: _____ <input type="checkbox"/> Sedimentation manhole: _____ <input type="checkbox"/> UIC: _____ <input type="checkbox"/> Treatment plant: _____ <input type="checkbox"/> Inlet/Catch basin: _____ <input type="checkbox"/> Other: _____ COMMENTS: _____
SURFACE WATER MIGRATION: <input type="checkbox"/> Unidentifiable/unknown <input type="checkbox"/> Columbia Slough City Outfall #: _____ <input type="checkbox"/> Columbia River City Outfall #: _____ <input type="checkbox"/> Fanno Creek City Outfall #: _____ <input type="checkbox"/> Johnson Creek City Outfall #: _____ <input type="checkbox"/> Tryon Creek City Outfall #: _____ <input type="checkbox"/> Willamette River City Outfall #: _____ <input type="checkbox"/> Other: _____	IMPACT/DOWNSTREAM EFFECT: <input type="checkbox"/> Unknown <input type="checkbox"/> None observed <input type="checkbox"/> Yes (describe): _____ SAMPLE COLLECTION: <input type="checkbox"/> No <input type="checkbox"/> Yes pH _____ T° _____ PHOTO RECORD: <input type="checkbox"/> No <input type="checkbox"/> Yes

REQUIRED CORRECTIVE ACTION

<input type="checkbox"/> Immediately <input type="checkbox"/> Within 24 hours <input type="checkbox"/> Other: _____
<input type="checkbox"/> TEMPORARY BMPs: <input type="checkbox"/> Contain on-site <input type="checkbox"/> Temporary sanitary connection <input type="checkbox"/> Cease and desist <input type="checkbox"/> N/A <input type="checkbox"/> Other: _____
<input type="checkbox"/> CLEAN-UP: Clean-up management: <input type="checkbox"/> RP <input type="checkbox"/> City Clean-up Contractor: _____ Follow-up Name: _____ Phone: _____

ACKNOWLEDGEMENT OF RECEIPT

RP Representative _____	Date _____
-------------------------	------------

Additional Comments/Requirements:

_____ _____ _____

NCR ROUTING: White—File/City of Portland Yellow—RP Representative Pink—Other

© CITY OF PORTLAND PP 1318 DEC 2013

B. Initiating Cleanup

The decision to initiate cleanup is based on the impact of the material on the receiving system and best professional judgment. Materials that have toxic characteristics or could cause system blockages will probably need immediate removal or collection.

C. Determining the Cleanup Lead

CLEANUP BY THE RESPONSIBLE PARTY

IDDE always tries to have the responsible party initiate the cleanup and identifies one person who has authority to lead the cleanup. IDDE does not recommend contractors to the responsible party. If the responsible party uses an outside contractor(s), IDDE requests copies of all information about the type and amount of materials released and cleaned up, for the City files.

Because elements of the City system have been impacted, IDDE contacts BES Maintenance Engineering to have them oversee the access and cleaning of system components. If immediate cleanup is needed and Maintenance Engineering is not available, IDDE may oversee the access and cleanup.

CLEANUP BY THE CITY OF PORTLAND

City remediation is used when there is no known responsible party or the responsible party refuses to or cannot conduct the cleanup. If there is concern about the materials involved, it is better to initiate a City response than to wait for the responsible party to take action.

Sanitary Sewage Releases

The Bureau of Transportation—Maintenance Operations (BOTMO) is usually the lead responder for sanitary sewage releases. If BOTMO is unavailable or unable to respond, the BOTMO Communications Center will request IDDE to go to the site to verify the release and mobilize a City cleanup contractor.

Non-Sewage Discharges

BOTMO does cleanup for discharges that are disposable through its street sweeping and sewer maintenance waste streams.

The City has contracts with outside contractors to respond to medium- or high-risk discharges that need immediate cleanup. IDDE calls a City contractor and also immediately notifies BES Maintenance Engineering to provide guidance about contractor use.

Pipe and Street Repairs

IDDE works with BOTMO to repair any pipes or streets that are the source of an illicit discharge. Upon completion of all repairs, IDDE takes a sample to ensure the illicit discharge no longer exists.

Table 1 summarizes the above City cleanup assignments by lead group. In all cases, IDDE is responsible for monitoring the cleanup and ensuring that it is performed correctly and completely

Table 1: Summary of City Cleanup Assignments by Lead Group

Bureau of Transportation—Maintenance Engineering (BOTMO)

- Acts as lead for sanitary sewage releases.
- Cleans up non-sewage discharges that are disposable through its street sweeping and sewer maintenance waste streams.
- Makes pipe and street repairs.

BES Maintenance Engineering

- Oversees access and cleaning of City system components when responsible party conducts the cleanup.
- Provides guidance to SPCR about contractor use for medium- or high-risk sewage releases.

IDDE

- Mobilizes cleanup contractor for medium- or high-risk sewage releases; notifies BES Maintenance Engineering to provide guidance about contractor use.
- May respond in following situations if BOTMO or Maintenance Engineering cannot:
 - May oversee access and cleaning of City system components when responsible party conducts the cleanup, if Maintenance Engineering is not available and immediate cleanup is needed.
 - Upon request by BOTMO, may go to site to verify a sanitary sewage release and mobilize a cleanup contractor.

IV. ENFORCEMENT

- IDDE uses the Environmental Compliance Division Notice of Investigation form (see page 8) to initiate enforcement actions.
- If the discharge site holds an Industrial Stormwater Management Program permit or Industrial Pretreatment Program permit, the BES permit manager is the lead in the enforcement action. IDDE is the lead for all other enforcement actions.
- Based on the source investigation results, BES may cite a violation, suggest corrective actions (see Section III), and/or assess a penalty, in accordance with Portland City Code and Administrative Rules. Detailed enforcement procedures (including communication with responsible parties and compliance procedures) are identified in the City's *Stormwater System Enforcement Procedures* (October 2013).
- The MS4 Program Manager receives the monthly enforcement summary. The Industrial Stormwater Permitting group and/or Portland Superfund Harbor group also receive the monthly enforcement summary if any incidents affect their programs.

V. FOLLOW-UP DISCUSSION

- The MS4 Program Manager meets with IDDE twice annually to review sampling results. The first meeting is before the annual monitoring starts. The second meeting is midway through monitoring (typically August) to discuss illicit discharges, enforcement actions, samples with detectable amounts of pollutants, and flagged outfalls and to discuss actions to prevent future illicit discharges.

City of Portland

STORMWATER SYSTEM ENFORCEMENT PROCEDURES (STEP)

*For Discharges to the Storm Sewer and Drainage
System Regulated under Portland City Code Chapter
17.39 and Administrative Rule ENB – 4.13*



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
working for clean rivers

This Page Intentionally Left Blank

Table of Contents

1. INTRODUCTION.....	5
1.1 Purpose	5
1.2 Legal Authority	5
1.3 Applicability	6
1.4 Roles & Responsibilities	6
2. ACRONYMS & GLOSSARY	7
2.1 Acronyms	7
2.2 Glossary of Terms	8
3. ENFORCEMENT PROCEDURES	11
3.1 Overview of Enforcement Response	11
3.2 Identifying a Violation	13
3.2 Determining an Enforcement Response	14
3.3 Issuing an Enforcement Action	15
3.3.1 Warning Notice Issuance	17
3.3.2 Notice of Violation Issuance	18
3.3.3 Compliance Order Issuance	18
3.3.4 Voluntary Compliance Agreement	19
3.3.5 Notice of Termination Issuance	20
3.4 Civil Litigation	22
3.5 Criminal Prosecution	23
3.6 Referral to Other Agencies	24
3.7 Staff Roles in Pursuing Enforcement	24
4. PENALTIES & COST RECOVERY	25
4.1 Determining Civil Penalty	25
4.2 Cost Recovery & Abatement	26
4.3 Penalty Reduction & Elimination	28
4.4 Final Determination	29
5. APPEALS.....	30
5.1 Administrative Review	30
5.2 Code Hearings	31

APPENDICES

Appendix A: Violation Classification Matrix

Appendix B: Penalty Algorithm & Gravity Matrix

Appendix C: Enforcement Action Forms & Templates

This Page Intentionally Left Blank

1. INTRODUCTION

1.1 Purpose

The Portland City Code (PCC) Chapter 17.39 and supporting Administrative Rules ENB-4.13 specify requirements and regulations that govern discharges to the City of Portland's (City) storm sewer and drainage systems, which includes the municipal separate storm sewer system (MS4) and the Underground Injection Control (UIC) system and associated drainage structures. The Bureau of Environmental Services (BES) is comprised of multiple workgroups that support a variety of programs designed to protect and preserve City infrastructure, safeguard the public and City personnel, and prevent harm to the environment.

This Stormwater System Enforcement Procedures (STEP) manual prescribes standard enforcement procedures for implementation across BES work units within the Environmental Compliance Division (ECD) that investigate and respond to instances of noncompliance with storm system discharge requirements. This manual promotes consistent execution of enforcement procedures and ensures objective and repeatable responses to violations of PCC 17.39 and associated rules.

At a minimum, this STEP manual:

1. Describes how the City will investigate instances of noncompliance;
2. Describes the types of escalating enforcement the City will take in response to all anticipated types of violations;
3. Identifies (by titles) the official(s) responsible for each type of response.

Nothing in this manual restricts the City from escalating enforcement response where the violation warrants such.

1.2 Legal Authority

PCC section 17.39.110 grants the City authority to enforce against dischargers who fail to comply with the requirements of PCC 17.39 and associated rules. This manual adheres to ENB-4.15 rules which establish decision-making criteria for assessing violations and penalties and an enforcement action appeals process. As programs evolve, changes to enforcement procedures will be incorporated into this manual.

1.3 Applicability

The following pages describe enforcement procedures to be used in response to dischargers who violate conditions of PCC Chapter 17.39 and the Administrative Rules for Discharges to the City Storm Sewer and Drainage System, ENB-4.13*. Enforcement procedures to be used in response to dischargers subject to and in violation of General NPDES Stormwater Discharge Permits administered by the Industrial Stormwater Program (ISW) are not addressed in this manual. In such cases, defer action to the appropriate ISW Permit Manager for the execution of enforcement proceedings in accordance with the Industrial Stormwater Program Implementation Manual.

1.4 Roles & Responsibilities

Two primary ECD workgroups investigate and respond to noncompliance (or potential noncompliance) with storm sewer discharge requirements – the Industrial Stormwater (ISW) and Spill Protection & Citizen Response (SPCR) sections. The ISW Program administers the Discharge Authorization, City Storm Sewer Permit and General NPDES Stormwater Permit Programs which ensure compliance with federal, state and local storm system discharge regulations. The SPCR team investigates spills, illicit discharges, collection system obstructions, and pollution entering, threatening, or leaving Portland's sanitary and storm sewer systems. The SPCR section also manages the Duty Officer Program, which provides after-hours and emergency response to the same.

* These rules do not apply to discharges to the City's combined sewer system(s). Portland's combined sewers are regulated by PCC Chapter 17.34.

2. ACRONYMS & GLOSSARY

2.1 Acronyms

BES	Bureau of Environmental Services
BMP	Best Management Practice
BOM	Bureau of Maintenance
CFR	Code of Federal Regulations
CM	Compliance Memorandum
CO	Compliance Order
COV	Cycle of Violation
DA	Discharge Authorization
ECD	Environmental Compliance Division
ERT	Enforcement Review Team
ISW	Industrial Stormwater Program
MS4	Municipal Separate Storm Sewer System
NOAC	Notice of Assessment of Costs
NOI	Notice of Investigation
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NT	Notice of Termination
O&M	Operation & Maintenance
PCC	Portland City Code
SPCR	Spill Protection & Citizen Response
UIC	Underground Injection Control
VCA	Voluntary Compliance Agreement
WN	Warning Notice

2.2 Glossary of Terms

Administrative Review

An administrative review is the first step in the administrative appeal process. This is an informal meeting between discharger and City representatives to address requests from the discharger to rescind an enforcement action, reduce or waive civil penalty, etc.

Civil Litigation

Civil litigation is the formal process of filing suit against a discharger to secure court-ordered action to mitigate violations and secure civil penalty for violations including the recovery of losses due to the noncompliance.

Code Hearings Process

A code hearing is the formal process by which a discharger appeals a final determination made by City personnel.

Compliance Memorandum (CM)

A CM is the enforcement tool used to document communication exchanges between the discharger and a City representative concerning a violation. Although the CM is not an enforcement document, it is a component of all enforcement actions regardless of the enforcement tool used in response to the violation.

Compliance Order (CO)

The CO is the enforcement tool used to document and declare orders to the discharger to bring about compliance within a specified period of time.

Criminal Prosecution

Criminal prosecution is the formal process of indictment for violations of requirements that are punishable, upon conviction, by civil penalty or imprisonment.

Cycle of Violation (COV)

A COV is the 12-month period following the date of the last violation of a specific condition of City Code or permit. The COV is used to determine a repeat offense and the appropriate level of enforcement response.

Discharger

Any person who causes or permits a direct or indirect discharge to the City sewer and drainage system.

Enforcement Review Team (ERT)

The ERT oversees enforcement implementation, assists in penalty determinations, and helps identify an appropriate enforcement response.

Final Determination

A final determination is any final decision, determination, or other action made by the City.

National Pollutant Discharge Elimination System (NPDES)

Clean Water Act (40 CFR Part 122) regulations that require dischargers to control and reduce pollutants in discharges to waters of the United States.

Notice of Investigation (NOI)

An NOI is a written notice from BES alerting site operators and owners to an investigation of a potential violation.

Notice of Termination (NT)

The NT is the enforcement tool used to document and respond to violations that pose imminent danger to health or the environment or reveal malicious and criminal intent. Termination of sewer service is an extreme measure that may be used when a discharger blatantly ignores notices, a Hearings Officer's decision, or a court order. It is also used in a case of emergency.

Notice of Violation (NOV)

An NOV is the enforcement tool used to document and respond to: 1) Class I, II or III violations; or, 2) a repeat offense of the same type of violation within the cycle of violation regardless of the order of magnitude, or, in most cases, the violation class. The NOV may also be used as escalated enforcement action in response to Warning Notice Violations.

Repeat Violation

A repeat violation is a violation of the same permit condition or sub-section of city code within a cycle of violation.

Storm Sewer and Drainage System

Means a City conveyance or system of conveyances, including pipes, pumps, drainage ditches, constructed channels, groundwater-related disposal systems, underground injection control devices, stormwater management facilities, or storm drains, that is designed or used to collect and transport stormwater. "Storm sewer and drainage system" does not include natural streams, creeks, ponds, lakes, a combined sewer, or part of a Publicly Owned Treatment Works, as defined in 40 CFR 122.2.

Violation Class

The violation class indicates the extent of the violation based on the magnitude or severity of the violation. There are four classes: Class I, Class II, Class III, and Warning Notice Violations.

Voluntary Compliance Agreement (VCA)

A VCA is a written mutual agreement between the discharger and the City. A VCA may be at the request of the discharger, in which case the discharger commits to required actions and submits a plan to maintain or return to compliance. The VCA is also used to document any variation of action or civil penalty assessment agreed upon during an administrative review.

Warning Notice (WN)

The WN is the enforcement tool used to document and respond to: 1) minor infractions classified as warning notice violations; and 2) a discrete number of select, repeat Warning Notice Violations within a cycle of violation.

3. ENFORCEMENT PROCEDURES

Failure to comply with the provisions of PCC 17.39 and ENB-4.13 constitutes a violation and is enforced in accordance with BES Enforcement Administrative Rule ENB-4.15. It is the policy of the Environmental Compliance Division that an enforcement action must be taken for any discharger that fails to comply with PCC 17.39. The following section describes the procedures that shall be employed by all staff members when undertaking enforcement for violations related to the City's storm sewer and drainage system.

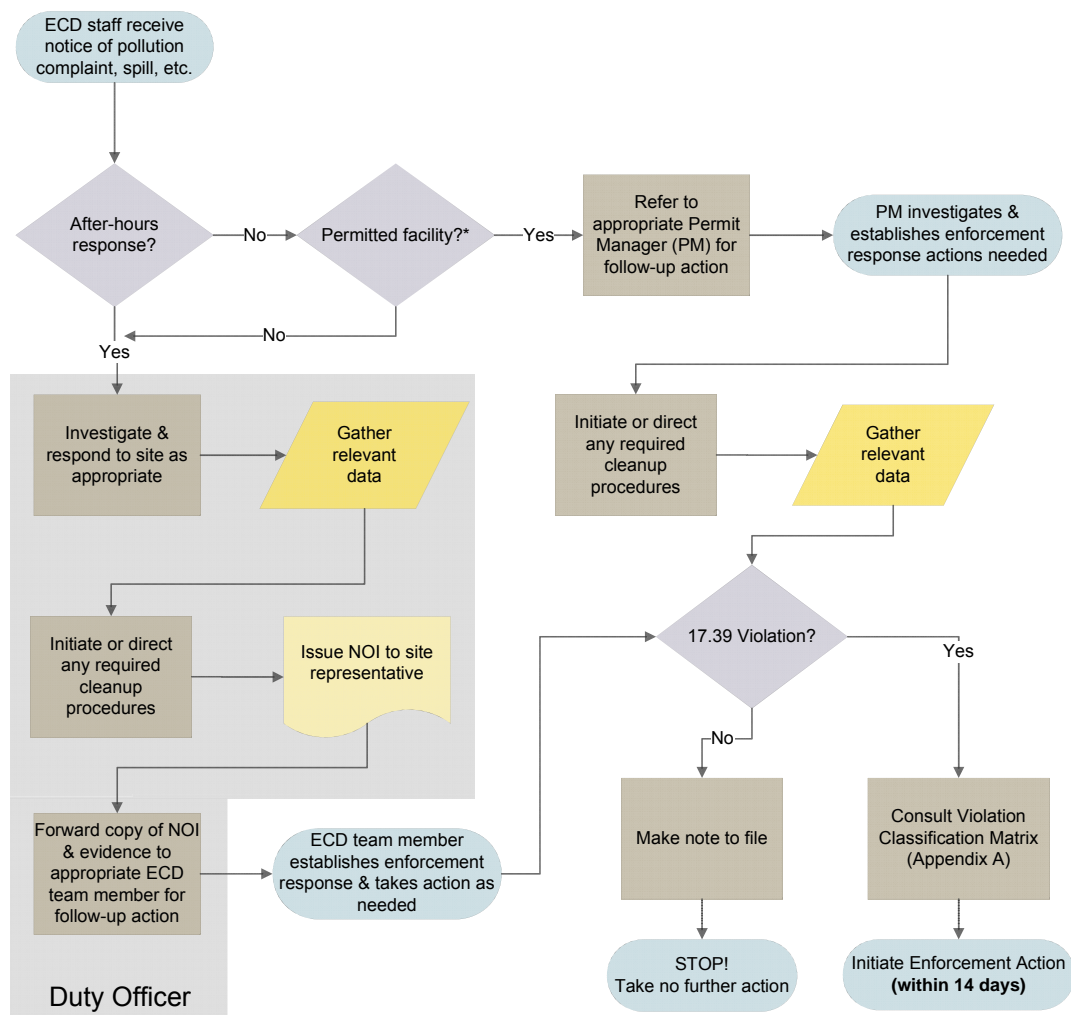
3.1 Overview of Enforcement Response

The following section outlines specific procedures and expectations associated with documenting a violation and issuing enforcement actions. The general process is as follows:

1. **Response to a potential violation and identification of the responsible party.** Violations of PCC 17.39 are identified by a variety of methods and may involve anything from a prohibited release to noncompliance with a Discharge Authorization (DA). Violations that threaten human health, safety, property or the environment require immediate action. ECD staff shall make all reasonable attempts to investigate a violation and to coordinate on the proper response as needed.
2. **Cleanup and corrective actions.** In the event that the violation threatens human health and safety, the MS4 or the environment, the ECD responder should take all necessary actions to ensure that the discharge ceases and that cleanup is initiated. If the responsible party has been identified, the ECD responder should direct the party and/or their contractor on the manner and nature of cleanup that is required. The discharger is ultimately responsible for cleanup and the associated costs related to the incident. More detailed procedures on this topic are outlined in the Duty Officer Procedures manual and in the cost recovery section of this manual.
3. **Evidence collection.** During a response to a potential violation, all reasonable steps must be taken to thoroughly document the circumstances, nature and extent of the violation. Photos, samples, written reports and other such evidence should be collected to the extent practicable in order to create a defensible case for an ensuing enforcement action. In the event that an enforcement action is challenged or appealed, this evidence will be used to make a final determination.

4. **Enforcement action.** Within 14 days of identifying a violation and the associated responsible party, ECD staff should initiate an enforcement action response. Enforcement actions can be issued to more than one party *for the same incident* in cases where multiple dischargers were found to be in violation of PCC 17.39. All violations and associated enforcement actions and outcomes must be tracked and documented. Maintain copies of all documentation supporting the violation, related letters, enforcement actions and cost recovery information. Record all necessary details about the violation into the appropriate information management system.

Procedure Diagram: Enforcement Response Overview



* A Permitted facility is any facility that is regulated by a Permit, Discharge Authorization, or other such control under City Code. The term also includes any facility regulated by an NPDES Permit or No Exposure Certification that discharges to the City storm system.

3.2 Identifying a Violation

When a site operator or discharger appears to be in violation of PCC 17.39, ECD staff must first verify that a non-compliant activity has occurred. This is accomplished in multiple ways; the most common of which is upon inspection or through the use of investigative techniques to gather information to substantiate the violating activity.

A direct or indirect discharge to the City's storm sewer and drainage system (as defined in PCC 17.39) must be reasonably established in order to verify a violation of PCC 17.39. A pathway to the MS4 can typically be demonstrated using property drainage records and information from mapped City collection system assets. The ISW Program maintains extensive property drainage records for many commercial and industrial properties in separated sewer areas.*

ECD staff have authority to enter and inspect a facility to determine compliance with the requirements of PCC 17.39 as well as authority to install monitoring devices as necessary to conduct sampling, inspection, and metering operations at a discharger's property for the purpose of:

- Investigating pollution complaints, spills and releases of prohibited materials that have entered and/or have the potential to impact the City's storm sewer and drainage system or its assets;
- Evaluating compliance with regulatory or other City programs, permits or other control mechanisms that manage discharges to the storm sewer and system;
- Identifying activities conducted at a facility.

PCC section 17.39.110 characterizes a violation as an instance when either of the following conditions is met:

- A failure to comply with the requirements of the code or associated rules; or,
- A failure to comply with a condition of a permit or contract issued under the authority of the code.

On occasion, it may be necessary to concede to the judgment of another workgroup who has more familiarity with conditions or circumstances that trigger a violation. For example, a Duty Officer may defer enforcement and refer supporting information to another ECD team member for determining and following up on a violation. In those

* While the BES Collection System GIS layer primarily displays City-operated storm system assets, it also shows some private and multi-jurisdictional stormwater conveyance systems. Ownership information listed in GIS is not highly reliable. In many cases, an official determination on storm pipe ownership has not been made and may need to be addressed by the bureau's legal team. Check with ECD management if system ownership is unclear in a particular violation case.

cases, the ECD team member who initially responds to the potential violation may complete and provide a Notice of Investigation (NOI) form to the site representative and forward a copy of the NOI to the appropriate ECD team member for follow-up action. ECD staff must consistently and thoroughly document, to the extent practicable, all information in support of an enforcement action. This will help to establish a secure and defensible basis for an enforcement response.

3.2 Determining an Enforcement Response

The proper enforcement response will vary based on the gravity of the violation. The **Violation Classification Matrix** (Appendix A) is a tool to assist ECD staff in the determination of an appropriate enforcement response to a violation. Although it is the City's intention to respond to all violations, all conceivable situations may not be addressed in this manual. In circumstances where a violation is not classified, ECD staff will consult with their respective Program Manager, who may consult with the Enforcement Review Team (ERT) to determine an appropriate level of response.

Once it has been established that a violation has occurred, ECD staff will consider multiple factors during the formation of the enforcement response. These factors include the following:

1. **Severity of the violation** – The severity of the violation indicates the degree of departure from a standard or regulatory provision, and it determines the class of violation. The violation classes are as follows:
 - **Class I.** A Class I violation is one that has a high degree of departure from the City's regulations or that poses a substantial threat to human health and safety, property, or the environment.
 - **Class II.** A Class II violation is one that has a moderate degree of departure from the City's regulations or that poses a significant threat to human health and safety, property, or the environment.
 - **Class III.** A Class III violation is one that is not a Class I or II Violation, has a minor departure from the City's regulations, or poses minimal threat to human health and safety, property, or the environment.
 - **Warning Notice Violation.** A Warning Notice Violation is reserved for minor reporting or operational violations arising from a minor departure from the City's regulations and where there is no threat to human health and safety, City assets, or the environment. Issuance of a warning notice

does not exempt the discharger from escalating enforcement actions when the underlying violation has not been addressed.

2. **Duration of violation** – This includes, but isn't limited to, the period of time over which a violation occurs as well as the responsible party's responsiveness – i.e., consider whether the responsible party responded within a reasonable amount of time or whether the violation continued over a prolonged period of time, and the action(s) taken to mitigate the noncompliance.
3. **Compliance history** – The compliance history of the responsible party is an important factor in evaluating the appropriate action to take in response to a violation. Recurring violations may indicate inadequately designed equipment, negligent operation and maintenance practices, casual observance of or refusal to conform to permit and/or code requirements, or a combination of variables. In consideration of this, repeat or chronic violations may be addressed and assessed more severely in an effort to compel and maintain compliance.
4. **Good faith effort** – A responsible party that exhibits little or no effort to remain or return to compliance, or is nonresponsive to enforcement action may be subject to more severe enforcement response. Conversely, a responsible party that demonstrates earnest intention and action to mitigate noncompliance may be considered for a reduced civil penalty, no civil penalty, or minimum civil penalty. Demonstrable willingness to comply and remedy noncompliance is considered during settlement of an enforcement action.
5. **Act of God** – Acts of God are exceptional circumstances that are outside of the reasonable control of the responsible party. They include uncontrollable events produced by natural forces, but do not include noncompliance to the extent caused by operational error, improperly designed or inadequate equipment, lack of preventive maintenance, or careless or improper operation.

3.3 Issuing an Enforcement Action

Once the appropriate enforcement response has been established using the factors discussed in Section 3.2 and the Violation Classification Matrix (Appendix A), an ECD staff member should initiate enforcement action within 14 days of discovery (NOTE: violations that threaten human health and safety, property or environmental quality must receive immediate action from ECD staff).

The following enforcement tools may be used in response to violations of PCC 17.39:

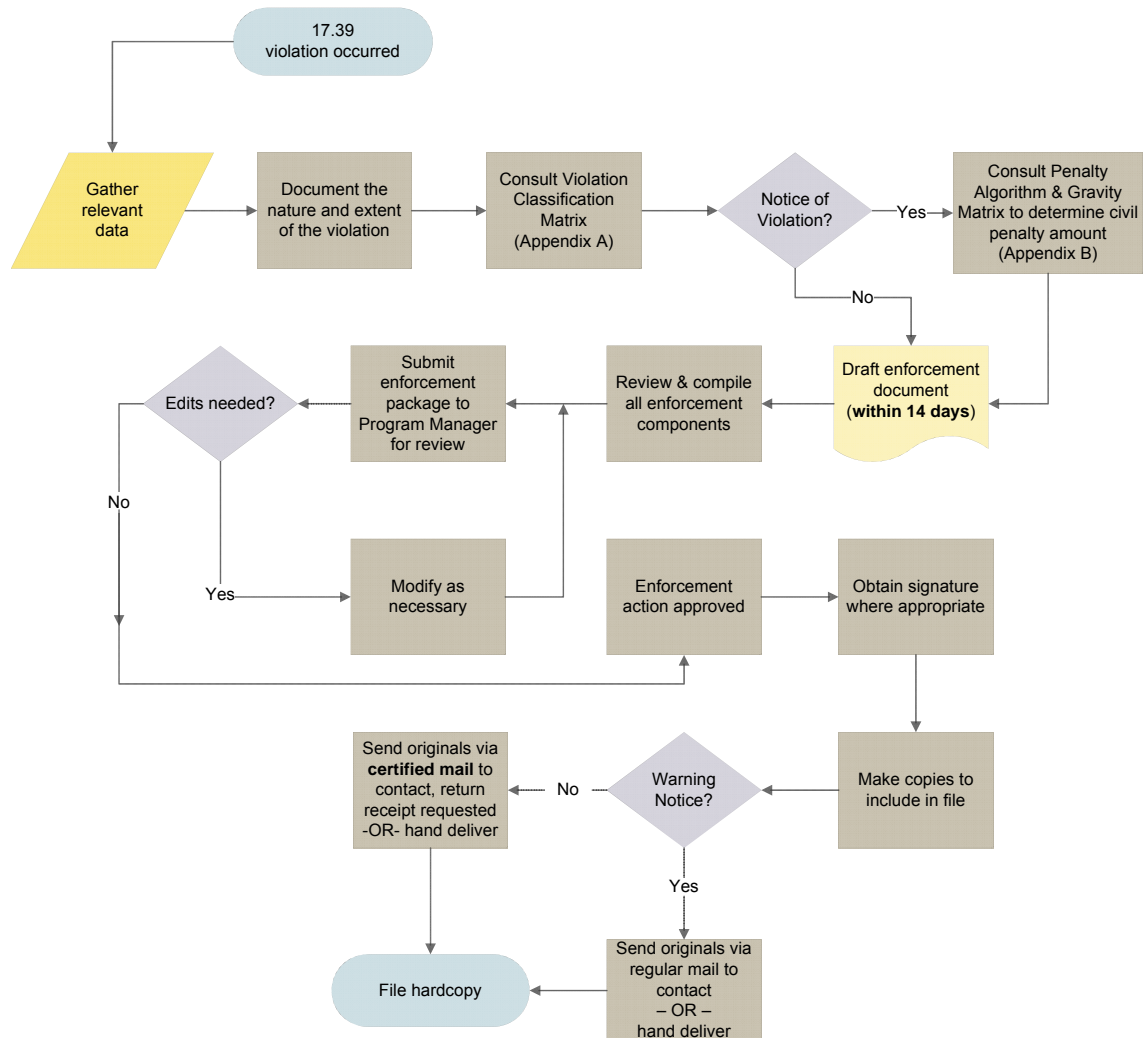
- Warning Notice
- Notice of Violation
- Compliance Order
- Voluntary Compliance Agreement
- Notice of Termination
- Civil Litigation
- Criminal Prosecution

An escalating enforcement feature is built into the City's enforcement strategy. ECD staff may incorporate specific enforcement tools, either alone or in conjunction with other components like a compliance order or monetary penalties, to bring about compliance.

ECD staff must document each enforcement action for tracking and record-keeping purposes. Documentation helps to support fair and consistent practices amongst ECD staff; preserves material of evidentiary value (photos, samples, inspection reports, written reports, etc.) used to substantiate the cause for action; records the circumstances surrounding a violation as well as decision-making criteria and logic in support of an action; and provides a historical record.

The following procedure identifies the key steps involved in issuing an enforcement action.

1. Gather relevant data and document the nature of violation.
2. Consult the Violation Classification Matrix (Appendix A) to determine the appropriate violation class and necessary enforcement response.
3. For NOVs only: Consult Penalty Algorithm & Gravity Matrix to determine appropriate civil penalty amount. Warning Notices do not have an associated monetary penalty.
4. Draft enforcement document.
5. Review & compile all enforcement components.
6. Submit enforcement package to Program Manager for review. Make any modifications as necessary.
7. Obtain appropriate signature(s).
8. Preserve a copy of the enforcement package for retention.
9. Send originals via certified mail to responsible party, return-receipt requested or hand-deliver. Warning Notices may be sent via regular mail or hand-delivered.
10. Track associated response dates and issue Final Determination after the 20-calendar-day time period has elapsed for enforcement actions that are appealable.
11. File hard copies of all related documents and retain for potential administrative review.

Procedure Diagram: Issuing an Enforcement Action**3.3.1 Warning Notice Issuance**

A Warning Notice (WN) is issued in response to minor reporting or operational violations arising from a minor deviation from regulations where there is no impact to the City's collection system, the environment, or public health. WN enforcement actions bear no associated civil penalty. However, failure to comply with any WN requirement will result in escalated enforcement action and civil penalty.

Consult the Violation Classification Matrix (Appendix A) to identify those limited situations in which a WN is issued. The diagram above identifies the steps to issuing a WN enforcement action.

3.3.2 Notice of Violation Issuance

A Notice of Violation (NOV) is issued in response to: 1) Class I, II or III violations; or 2) repeat offenses of the same violation within the cycle of violation regardless of the magnitude, or, in most cases, the violation class. There are few exceptions to the above-described violation types where an NOV is not the appropriate enforcement response. Consult the Violation Classification Matrix (Appendix A) for details. In instances where a violation is not classified, ECD staff must consult with their Program Manager who may subsequently consult with the Enforcement Review Team (ERT) to determine the appropriate level of response.

An NOV includes a civil penalty, which is determined using the penalty algorithm detailed in the Civil Penalty Determination & Assessment section and provided in Appendix B. Failure to comply with any NOV requirement will result in escalated enforcement action and civil penalty. The diagram above identifies the steps to issuing an NOV enforcement action.

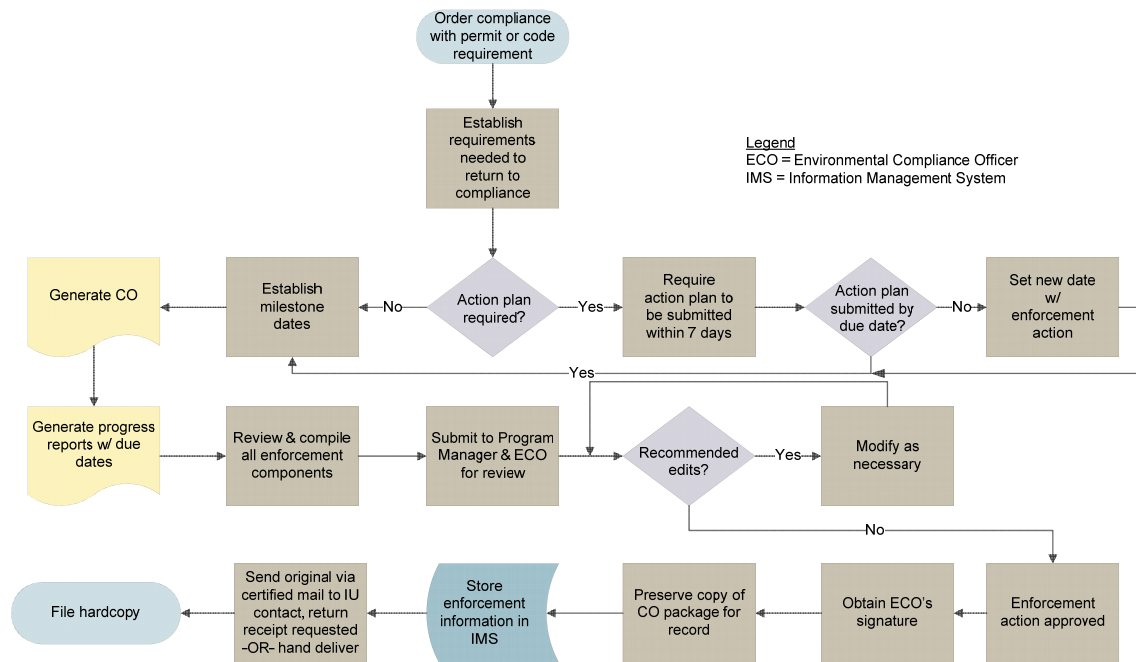
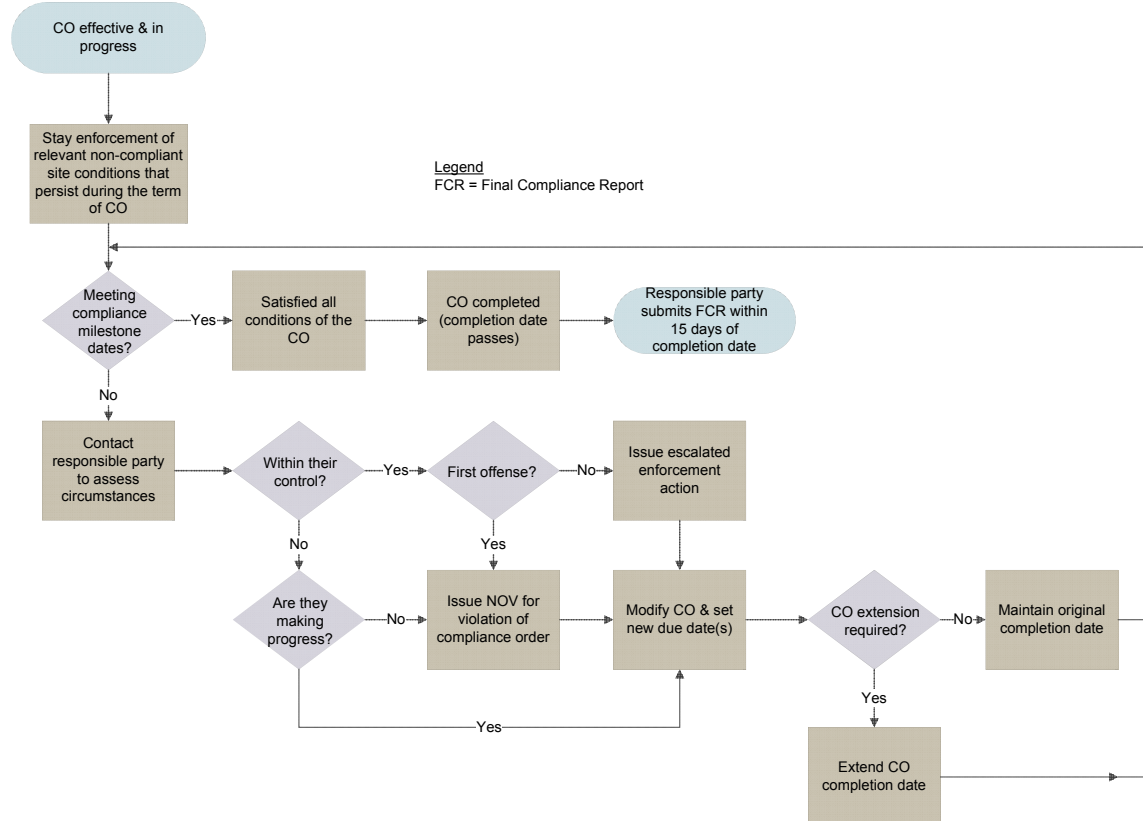
3.3.3 Compliance Order Issuance

A Compliance Order (CO) is a formal Order directing a facility or property owner to take specific corrective actions within a specified timeframe to resolve a violation. Although a CO is the enforcement tool to document and declare orders to the responsible party to bring about compliance, the responsible party may submit a plan to return to compliance.

A CO is a unilateral action in which the terms are not negotiated with the responsible party. If circumstances warrant the development of an action plan to achieve compliance, the action plan must be incorporated into the CO with deadlines. Failure to comply with any CO requirement will result in escalated enforcement action and civil penalty.

ECD staff will refrain from enforcing on non-compliant site conditions addressed in the Order that persist during the term of the CO provided the responsible party complies with all conditions of the CO. Following completion of the CO and implementation of the above-mentioned plan, the facility or responsible party may be required to demonstrate ongoing compliance for at least 90 days.

The following procedures identify the steps to issuing and implementing a CO enforcement action.

Procedure Diagram: Issuing a Compliance Order**Procedure Diagram: Compliance Order Implementation**

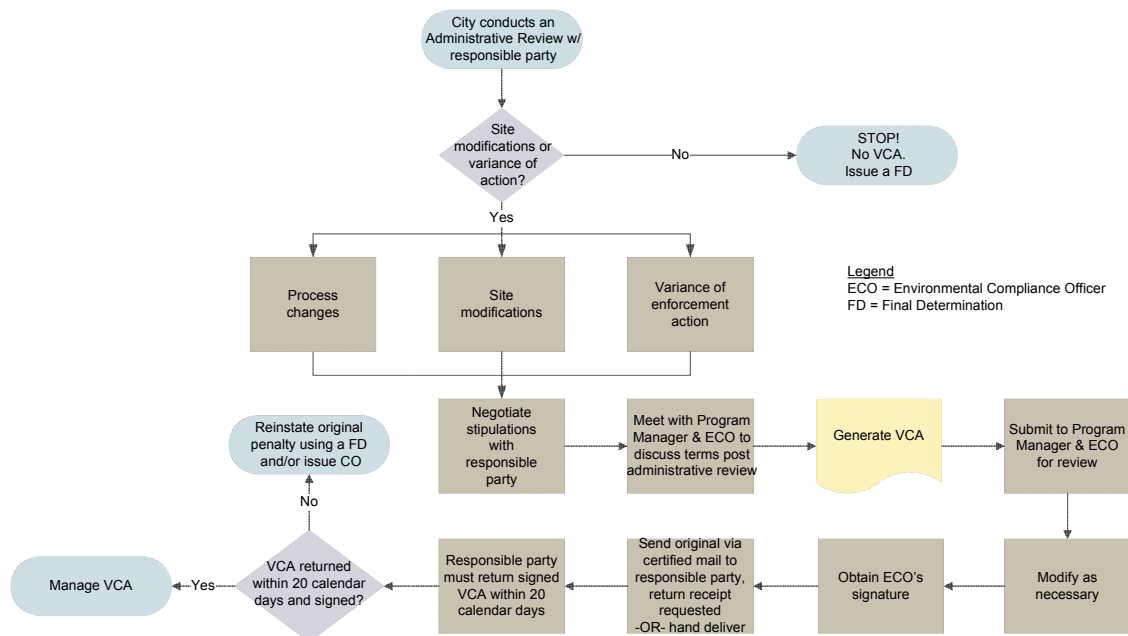
3.3.4 Voluntary Compliance Agreement

A Voluntary Compliance Agreement (VCA) is an agreement between the responsible party and the City that combines the force of a Compliance Order with the flexibility of a negotiated settlement. A VCA is appropriate when the responsible party assumes responsibility for its noncompliance and is willing (in good faith) to correct its causes. It is also used to document any variation of action or civil penalty reduction agreed upon during administrative review.

At a minimum, the VCA will contain four elements: compliance schedules; stipulated fines and/or remedial actions; consequences for failure to comply; and signatures of the City's Environmental Compliance Officer and the responsible party. Signing the VCA is neither an admission of liability nor a plea of guilt. It offers an alternative means to achieve compliance while preserving City and customer relationships. The VCA allows the responsible party to influence approaches to corrective action and it fosters cooperation.

ECD staff will refrain from enforcing on non-compliant site conditions addressed in the VCA that persist during the term of the VCA provided the responsible party complies with all conditions of the VCA. By agreeing to the terms of the VCA, the responsible party waives its rights to any administrative review or appeal regarding the findings or the conditions of the agreement. Although the provisions of a VCA reflect voluntary agreement, violation of a VCA is enforceable at the level of a Compliance Order. The following procedure identifies the steps to issuing a VCA.

Procedure Diagram: Voluntary Compliance Agreements



3.3.5 Notice of Termination Issuance

Enforcement response is designed to escalate with the severity of the violation. A Notice of Termination (NT) may be issued when:

1. A discharge poses imminent threat to public health or the environment;
2. A discharger submits false information on its discharge permit application or on self-monitoring reports, and the associated discharge endangers the City storm system and the environment;
3. A failure to maintain records evidences malicious intent;
4. A discharger fails to pay a civil penalty within 30 days following a final determination;
5. Entry to a facility is denied during time of critical entry.

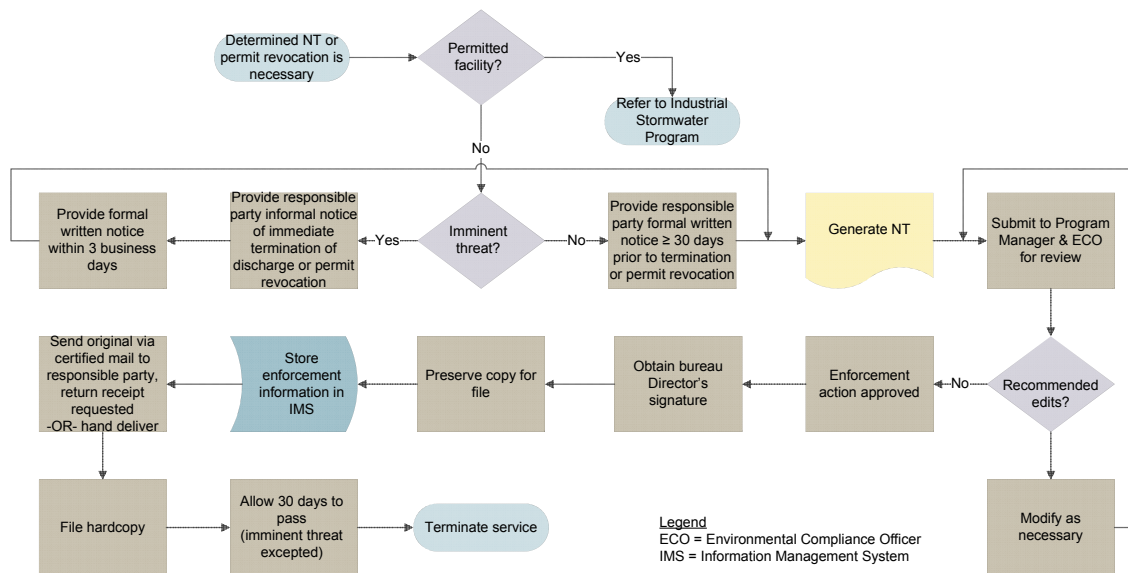
Notice of termination of discharge or permit revocation will be provided to the responsible party or posted on the property at least 30 days prior to terminating the discharge or revoking the permit in non-urgent situations. Written notice will be provided in situations that do not represent imminent danger to public health, welfare or the environment, or threaten harm to the City storm and drainage system. The notice will contain the following elements:

1. Reason(s) for terminating the discharge or revoking the permit;
2. Effective date of termination or revocation;
3. Duration of the termination or revocation;
4. City contact information; and,
5. Bureau Director's signature

In situations where there is imminent danger to public health, welfare or the environment, or an imminent threat of harm to the City storm sewer and drainage system, the Director of Environment Services may immediately terminate an existing discharge, prevent a new discharge, or revoke a permit after providing informal notice to the discharger. Informal notice may be verbal or written and will include the effective date, duration, and a brief description of the reason for notice. Within three business days following informal notice, a formal written notice will be provided to the discharger.

The following procedure identifies the steps to issuing an NT enforcement action.

Procedure Diagram: Issuing a Notice of Termination



3.4 Civil Litigation

PCC section 17.39.110 grants BES the authority to take legal action in any court of competent jurisdiction for failure of a person to take correction action. Civil litigation is the formal process of filing suit against a responsible party to secure court-ordered action to correct a violation and to secure penalties for violations including the recovery of costs to the City of the noncompliance. It may be pursued when the corrective action required is costly and complex, the penalty to be assessed exceeds that which the City can assess administratively, or when the responsible party is considered to be difficult and unwilling to cooperate.

Legal action may be an appropriate enforcement response in three general situations:

1. In emergency situations where injunctive relief is necessary to halt or prevent discharge which threatens human health and safety or the environment, or interferes with the City's storm sewer and drainage system;
2. When efforts to restore compliance through cooperation with the discharger have failed and a court supervised settlement (consent decree) is necessary to enforce program requirements;
3. To impose civil penalties and recover losses incurred due to the noncompliance.

Procedure: ECD staff will collect all background material on the discharger for their Program Manager. The Program Manager will discuss the case with the City's Environmental Compliance Officer, who will in turn, discuss the case with the bureau Director. The Environmental Compliance Officer and the Director will present the case to the City Attorney's Office.

The Director must seek Council approval for litigation through the Commissioner. The City Attorney's Office will file a complaint with the Court after Council approval is obtained.

3.5 Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of requirements that are punishable, upon conviction, by civil penalties and/or imprisonment. The purposes of criminal prosecution are to punish noncompliance established through court proceedings and to deter future noncompliance.

Criminal prosecution may be appropriate when the City has evidence of serious noncompliance which shows criminal intent (knowing) or negligence. Criminal prosecution may be brought prior to, concurrently with, or subsequent to civil litigation. Although civil litigation and criminal prosecution are not mutually exclusive, evidence that the named defendant(s) committed an illegal act with criminal intent must be present before an indictment is sought. A criminal case will be filed under the State Statutes because the City Code does not have specific criminal penalties.

Procedure: Criminal prosecution begins when the City believes a crime has been or is about to be committed. This information may result from routine inspection and monitoring activities.

Once the alleged crime is discovered, the City Attorney's Office will be alerted. Evidence of noncompliance which will be admissible in a criminal trial must be gathered and submitted through the City Attorney's Office to the District Attorney. The City Attorney's Office will review the case to determine whether the case warrants criminal prosecution. If it does, the case will be referred to the District Attorney's Office.

The City will cooperate with the District Attorney's Office to the fullest extent.

3.6 Referral to Other Agencies

There may be occasions when BES finds it is unsuccessful to compel a particular discharger to achieve consistent compliance. In these circumstances, it may be appropriate to refer the matter to federal, state or local agencies as appropriate.

Procedure: ECD staff will collect all evidence of noncompliance for their Program Manager. The Program Manager will review the feasibility of referring the case outside the City with the City's Environmental Compliance Officer. If the decision is to refer the case, the Environmental Compliance Officer may discuss the case with the bureau Director. The Environmental Compliance Officer may contact representative staff of the outside agency.

Initially, it may be determined that an incident falls outside the scope of City's jurisdiction and authority. For example, a release of material to surface waters via a private outfall or a non-stormwater discharge to a private UIC are not covered under 17.39. Environmental incidents not applicable under 17.39 should be referred to the Oregon DEQ. Consult with your Program Manager prior to initiating a referral.

3.7 Staff Roles in Pursuing Enforcement

<u>Action Type</u>	<u>Initiate Response</u>	<u>Review</u>	<u>Authorize/Sign</u>
Warning Notice	ECD staff	PM	ECD staff
Notice of Violation	ECD staff	PM	PM
Compliance Order	ECD staff	PM & ECO	ECO
Voluntary Compliance Agreement	ECD staff	PM & ECO	ECO
Notice of Termination	ECD staff	PM & ECO	Director
Notice of Assessment of Costs	ECD staff	PM & ECO	ECO
Final Determination	ECD staff	PM & ECO	ECO
Final Order	Hearings Officer	Hearings Officer	Hearings Officer
Civil Litigation	PM & ECO	ECO & Director	Legal Counsel
Referral to Approval Authority	PM & ECO	ECO & Director	ECO
Criminal Prosecution	ECO & Director	Legal Counsel	District Attorney

Legend:

ECD = Environmental Compliance Division

ECO = Environmental Compliance Officer

PM = Program Manager

4. PENALTIES & COST RECOVERY

4.1 Determining Civil Penalty

Civil penalties are assessed using the algorithm in Appendix B, which incorporates base and gravity penalty components. Escalating penalty amounts are built into the penalty strategy and are incentive for responsible party(s) to take corrective action as soon as possible. If a party does not take remedial action in response to a violation or the associated enforcement action, more aggressive enforcement will ensue and significantly higher penalties will be assessed for continued noncompliance.

Use the following procedure to determine a civil penalty to associate with an enforcement action.

Procedure: ECD staff must first determine the base penalty for the violation. The “base penalty” is determined by a site’s permit status and a violation’s class. The base penalty is the value identified by the intersection of the appropriate row and column that correspond to the appropriate permit status and violation class, respectively. Consult the Violation Classification Matrix (Appendix A) to identify the appropriate violations class. If a violation is not classified, staff must consult with their Program Manager. (NOTE: If a site operates under the conditions of a Discharge Authorization or General NPDES Stormwater Discharge permit for discharges to the storm system, redirect enforcement responsibilities to the Industrial Stormwater Program.)

After establishing the base penalty, determine the “gravity penalty” component of the civil penalty. The gravity penalty is derived from a numerical score that is assigned to each violation event. The score is a tally of point values associated with applicable criteria used to assess the violation’s impact, actions taken to remedy the violation, and the site’s compliance history. Once the score is established, use the Gravity Penalty Determination Matrix to determine the gravity penalty amount that correlates to the score. Calculate the civil penalty by adding the gravity and base penalty amounts.

Use the algorithm form to identify and document the criteria used to establish a civil penalty. Preserve a copy of the completed algorithm form for each civil penalty determination.

4.2 Cost Recovery & Abatement

BES has authority to recover all City costs related to the abatement of a violation. BES may recover costs related to: staff time for personnel through all stages of the City's response to a violation; sampling and analysis; the use of pollution control supplies and equipment; the use of contracted professional and labor services; repair or replacement of infrastructure; and penalties levied against the City as a result of the violation.

The following table identifies activities to include in recoverable cost determinations:

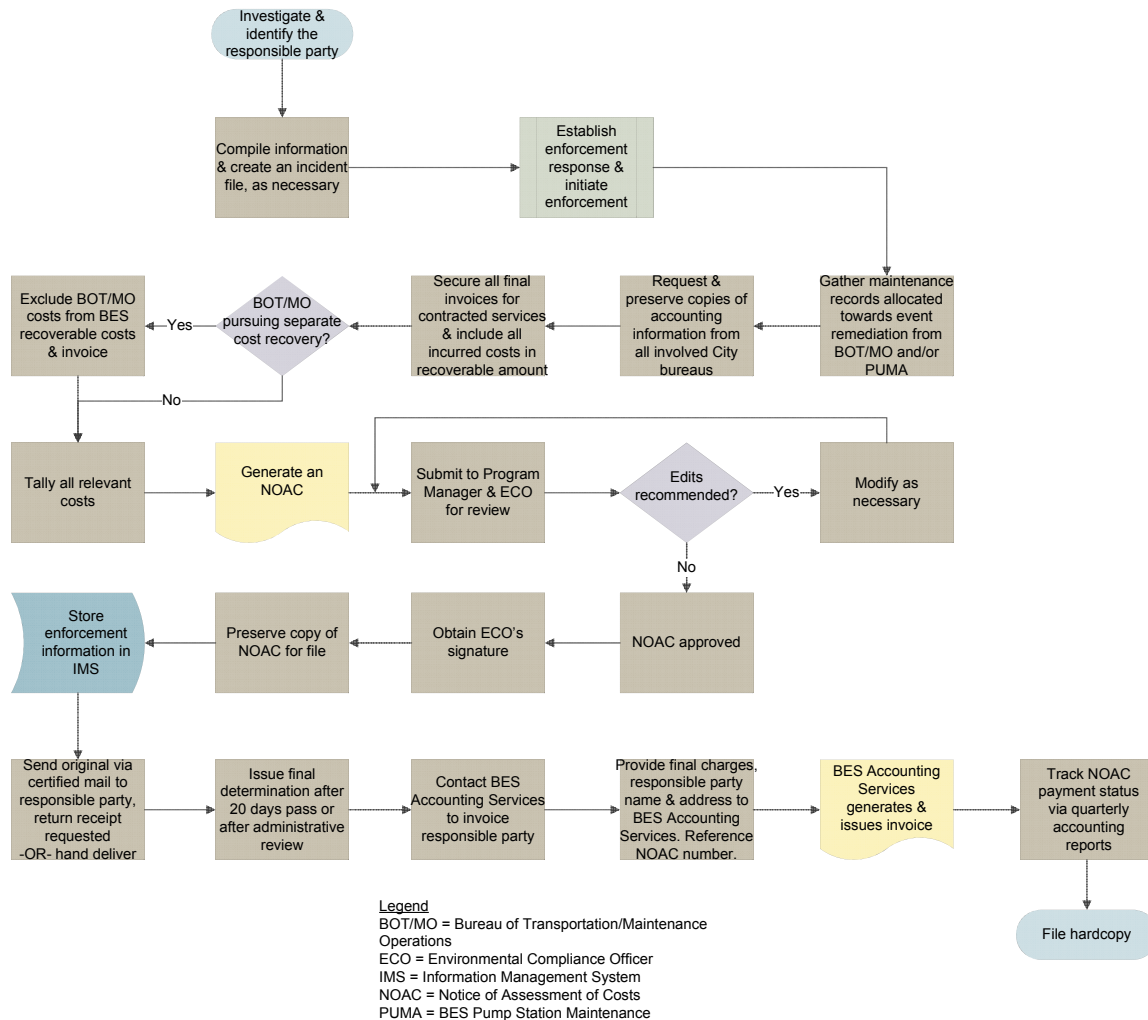
Recoverable Cost(s)	Associated Activities
Staff time related to the event that will be charged to standard and overtime:	Complaint receipt(s)
	Field response
	Investigation and research
	Sampling
	Initial enforcement
	Reports
	Follow-up sampling
Other BES technical staff:	Collection System Maintenance Engineering
	Sampling crew staff time: Coordinated Site Assessment and Field Operations
Field response activities:	Sampling
	Laboratory analysis
	Equipment and supplies
	Mitigation associated with an ongoing violation
Remediation:	BOT/MO time and equipment
Contracted services:	Locates
	Excavation
	Clean up
	Traffic control
Damage to system:	All costs associated with repair of storm and/or sewer system
	Staff time for planning, preparation, and repair of system
Any penalties incurred by the City as a result of the violation.	

(NOTE: Staff time related to administrative oversight, city code and administrative rules analyses, routine questions to the City Attorney's Office, administration of enforcement, appeals, hearings, or administrative reviews will be excluded.)

Cost recovery is an adjunct to the enforcement process that is carried out independently of an associated enforcement action. ECD staff will secure and document all relevant

costs associated with abatement of a violation and initiate cost recovery according to the following established BES cost-recovery procedure.

Procedure Diagram: Issuing a Notice of Termination



To determine costs associated with **staff time**, you must calculate the full cost of staff time using the following formulae:

$$T_{\text{standard}} = (W)(1+f) \text{ and, if applicable, } T_{\text{overtime}} = (W)(0.5) + T_s, \text{ where}$$

W = standard hourly wage

f = BES non-salary labor cost factor*

T_{standard} = Full-cost Standard time

T_{overtime} = Full-cost Overtime

* The BES non-salary labor cost factor is updated annually. ECD staff must contact the BES Business Services Group, Financial Planning Division, to obtain the current percentage.

Example

If BES non-salary-labor costs are projected to be 36.9% of salary and the wage is \$10/hour,

$$\text{Full Cost of Standard Time} = T_s = (W)(1+f) = (\$10)(1.369) = \$13.69$$

$$\text{Full Cost of Overtime} = T_o = (W)(0.5) + T_s = (\$10)(0.5) + \$13.69 = \$5 + \$13.69 = \$18.69$$

4.3 Penalty Reduction & Elimination

Penalty amounts may be reconsidered upon the responsible party's request for an administrative review. Penalties may be adjusted based on criteria stated in BES Enforcement Program Administrative Rules ENB-4.15. A responsible party will have 20 calendar days from the enforcement notice's mailing date to submit a written request for administrative review.

Additional mitigating factors to consider when assessing whether a penalty adjustment is warranted are:

1. **Cooperativeness of the Responsible Party** – e.g., has the responsible party improved housekeeping practices, trained employees or taken steps to improve performance?
2. **Best management practices** – e.g., are workers trained in appropriate operating practices? Is currently available equipment operated efficiently and properly maintained?
3. **Actions taken in response to assessment of civil penalty** – e.g., did the responsible party communicate with the City upon receiving notice of the violation? Have changes been immediately following the enforcement action and penalty assessment?
4. **Current and proposed investment in facilities.**
5. **Practical implications of settlement as proposed by the responsible party** – i.e., does the proposal ensure compliance, and over what period of time?
6. **Other compliance options** – e.g., is a Voluntary Compliance Agreement (VCA) or Compliance Order (CO) an appropriate approach to obtaining compliance?

Upon finding that a penalty adjustment will be granted, the ECD staff will either issue a Final Determination (discussed below) and/or draft a VCA identifying the mutually agreed stipulations, compliance schedule dates, and the approved variance action.

4.4 Final Determination

A Final Determination letter is sent to the responsible party 20 calendar days after the date that an NOV is mailed. The purpose of the Final Determination notice is to make the responsible party aware of any changes to the requirements in the notice or reduction of the civil penalty amount based on the result of an associated administrative review (see Section 5.1).

If an administrative review has not been requested, the Program Manager will issue a written Final Determination to the responsible party for each enforcement action (other than a Warning Notice) after the 20-calendar-day time period has elapsed.

If an administrative review was requested and conducted, the Environmental Compliance Officer will issue the written Final Determination conveying the results of the review to the responsible party within 14 calendar days of the date that the review was conducted, unless an extension is agreed upon by the responsible party and BES.

ECD staff will prepare the final determination and have it reviewed by their respective Program Manager. Once complete, ECD staff will forward the determination to the Program Manager or the Environmental Compliance Officer for authorization and signature.

5. APPEALS

5.1 Administrative Review

A responsible party may request reconsideration of an enforcement action through administrative review for items including, but not limited to the following:

1. The nature and extent of a violation and enforcement actions taken;
2. Penalty amounts and determination;
3. Cost recovery considerations;
4. A requirement to submit plans, reports or records for review; and
5. Additional provisions specific to the stormwater program that are outlined in ENB – 4.13, Section 14.

However, administrative review of the City's authority to regulate a discharger, enter facilities for inspection or sampling purposes, impose penalties, or recover costs for abatement of a violation are not considered "reviewable" and *will not be granted*.

Schedule & Timeline

In order to request an Administrative Review, the responsible party must submit a written request within 20 calendar days of the enforcement notice's mailing date, as referenced on the enforcement action. BES must then schedule an Administrative Review within 14 days of receipt of the request unless otherwise agreed by the responsible party and the City. Following the review, the Environmental Compliance Officer will then issue a written Final Determination (see Section 4.4) within 14 days of the review unless an extension is agreed upon by all parties.

Conducting the Admin Review

The relevant Program Manager is responsible for scheduling and facilitating the administrative review at BES. The responsible party will be given the opportunity to present relevant information in person for the review. As such, scheduling of the review should accommodate attendance by the responsible party, if they so desire. However, the responsible party is not *required* to attend the Administrative Review and may opt out. An Enforcement Review Team (ERT) consisting of the Program Manager, the Environmental Compliance Officer and a program representative will evaluate all material and information presented in support of the review. Following a review and presentation of the relevant case documents, the ERT will make a determination on whether a basis exists to change the requirements listed in the enforcement action and/or

to reduce the associated civil penalty. The results of the ERT review, rationale and outcome must be clearly documented.

A Final Determination is then sent as noted above in Section 4.4, which provides information about the process for filing an appeal to the City's Code Hearings Officer, if the discharger wishes to challenge the decision further.

5.2 Code Hearings

A responsible party must complete an Administrative Review prior to appealing further to the City Code Hearings Officer (CHO). Appeals must be submitted within 10 calendar days of the date on the Final Determination notice to the Environmental Compliance Officer. An appellant must submit all appeal application materials to the Environmental Compliance Officer who will forward the appeal request to the CHO within 14 days of receipt. The CHO will schedule and conduct the hearing based on the submittal.

After the hearing, the CHO will issue a Final Order granting, modifying, or denying the action requested. Review of the Final Order by any aggrieved party, including the City, will be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010.

APPENDIX A

Violation Classification Matrix

Violation Classification Matrix

For violations of Portland City Code Chapter 17.39
and Administrative Rule ENB – 4.13
City Storm Sewer & Drainage System

Violation	Violation Class			
	WN	III	II	I
17.39.040 PROHIBITED DISCHARGES				
Discharge in violation of discharger’s NPDES Permit	ISW Enforcement Matrix ¹			
Discharge in violation of discharger’s City Permit or Authorization	See Discharge Permits & Authorizations			
Unauthorized discharge without a City Permit or Authorization (unknowing)			✓	
Unauthorized discharge without a City Permit or Authorization (knowing)				✓
Intentional Discharge to City UIC Systems (unknowing)			✓	
Intentional Discharge to City UIC Systems (knowing)				✓
pH: between 3 and 5.5, or between 9 and 11			✓	
pH: ≤3, or ≥ 11				✓
Visible sheen			✓	
Discharge of petroleum products in excess of Reportable Quantity (RQ)				✓
Visible discoloration, except for testing dyes used or approved by the City			✓	
Heated discharge that could cause damage to City system				✓
Discharge of toxic substances (no endangerment)			✓	
Discharge of toxic substances (endangerment)				✓
Discharge of refuse, rubbish, garbage, floating solids, etc			✓	
Placement of materials causing obstruction, blockage or damage to City system				✓
Discharge of process wastewater, including washwater (no endangerment) ²			✓	
Discharge of process wastewater (endangerment)				✓
Discharge in excess of receiving storm system(s) volume capacity				✓
Discharge containing liquids, solids, or gases that create a fire or explosion hazard				✓
Discharge that causes violation of City NPDES or WPCF permit				✓
All other prohibited discharges as stated in 17.39 (no damage to storm system)			✓	
All other prohibited discharges as stated in 17.39 (damage to storm system)				✓

Notes

1. Refer all violations of NPDES Permits, City Permits or Discharge Authorizations to the ISW Program.
2. Unless authorized to discharge under a DEQ NPDES permit and discharge is in compliance with associated requirements.
3. Consult with the Environmental Compliance Officer & your Program Manager prior to taking enforcement action.

Violation	Violation Class			
	WN	III	II	I
17.39.050 NOTIFICATION & CONTROL OF ILLICIT CONNECTIONS & DISCHARGES				
Failure to notify BES of a discovered illicit connection within 24 hours			✓	
Failure to immediately report a spill or uncontrolled discharge of hazardous, toxic or prohibited substances				✓
Failure to submit written report of illicit discharge within 5 days		✓		
Failure to coordinate or take corrective action in response to a prohibited discharge				✓
Inadequate corrective action response to a prohibited discharge			✓	
Failure to eliminate or control system entry points with spill potential			✓	
17.39.060 DISCHARGE PERMITS & AUTHORIZATIONS ¹				
Failing to obtain or apply for a City Permit or Authorization		✓		
Failing to conduct monitoring activities as required by City Permit or DA			✓	
Submittal of late/incomplete reports, records, data or plans as required under a City Permit or DA		✓		
Failure to install or implement source control measures			✓	
Failure to comply with requirements as stated in a Compliance Order or VCA				✓
17.39.070 & 080 INSPECTIONS & SAMPLING				
Entry to premises denied ³				✓
Failure to collect samples as required by BES directive, non-Permit holder		✓		
Failure to provide access to sampling manhole or location, 1 st notification	✓			
Failure to provide access to sampling manhole or location, escalation		✓		
17.39.090 REPORTING REQUIREMENTS				
Failure to submit a required report, non-Permit holder	✓			
Failure to submit a required report, non-Permit holder, repeat offense		✓		
Submittal of fraudulent or false statements				✓
17.39.100 RECORDS RETENTION				
Failure to maintain records in compliance with Chapter 17.39 for five years		✓		

APPENDIX B

Penalty Algorithm & Gravity Matrix

Civil Penalty Determination & Assessment

Penalty Algorithm & Gravity Matrix Enforcement Number

Civil Penalties are assessed using the following algorithm that assigns a numerical score for each applicable criterion listed in the following tables: **Civil Penalty = Base Penalty + Gravity Penalty**

	Base Penalty (\$)		
	Class I	Class II	Class III
Permit Holder	800	400	200
Non-Permit Holder	400	200	100

Points ¹	Gravity Penalty Criteria ²
Impact Or Harm To Public Health, The Environment, Or City Collection or Treatment Works	
0	No actual harm or no evidence of detrimental impact on city assets. No actual harm; no evidence of detrimental impact on public health or the environment; or no evidence of impairment of beneficial uses. No actual harm or no evidence of detrimental impact at the treatment plant.
3	Minor release of material with evidence of migration to the City collection system and/or a water body with no evidence to support a claim of public health impact, environmental damage, or impairment of beneficial uses. Violation results in minor system repair or cleaning, or replacement of vegetation in <10 percent of asset area.
6	Violation results in replacement of a system component (grate, inlet) or replacement of vegetation in > 10 percent but < 25 percent of asset area.
9	Violation results in: local flooding caused by system blockage; replacement of more than one system component (grate, inlet, section of pipe); replacement of vegetation in > 25 percent of asset area; or causes a violation of a City-held permit. Minor public health impacts, environmental damage, or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation.
12	Violation results in minor system component repair or cleaning at the treatment plant.
15	Evidence supports a claim of public health impact, environmental damage, or impairment of beneficial uses and there is a plausible connection between the violation and the damage or impairment.
21	Violation results in modification of treatment process.
25	Direct evidence links demonstrable public health impact, environmental damage, or impairment of the beneficial uses with the violation.
25	Violation results in treatment plant upset, interference, or pass-through; major system repair or cleaning, or causes violation of City-held permit.
Actions Taken To Remedy Violation	
0	The violation was corrected without delay and with adequate measures.
5	An attempt was made to correct the violation with delay or inadequate measures.
10	No attempt was made to correct the violation.
Compliance History	
0	No previous history of this or any other violation.
3	There is a written record documenting any other violation within past 24 months.
7	There is a written record documenting the same violation within past 12 months.
10	A Notice of Violation was issued within the previous 12 months for this violation, and the violation was not corrected.
Supplemental Compliance Component	
2	There is a written record documenting 4 or more repeats of same violation within past 12 months.
Other Factors	
25	Denial of Entry
25	Falsification or destruction of data – or – equipment tampering.
SCORE	(Do not include with enforcement action. Place in IU enforcement file for record)

Gravity Penalty Determination Matrix ³									
Score	3-5	6-7	8-9	10-12	13 -15	16-18	19 -21	22-24	>24
Penalty (\$)	100	250	500	1000	2000	3000	5000	7500	10000 ⁺

Gravity Penalty Narrative

Please describe reasons in support of the criterion & corresponding point value selected for each of the following categories:

Impact Or Harm To Public Health, The Environment, Or City Collection or Treatment Works
1.
Actions Taken To Remedy Violation
1.
Compliance History
1.
Supplemental Compliance Component
1.
Other Factor(s)
1.

Total Civil Penalty Assessment: \$0.00

¹ A point value of 0 shall apply to non-applicable criteria.

² Select one criterion from each applicable category. Selected criterion must represent most severe and applicable outcome.

³ Per day penalties may apply to the original calculated penalty (e.g. for violations posing imminent public health or safety dangers, or for violations including denial of entry.)

⁴ Maximum penalty per violation per day (i.e., base penalty is not factored into penalty determination at this stage)

APPENDIX C

Enforcement Action Forms & Templates



CITY OF PORTLAND ENVIRONMENTAL SERVICES



Water Pollution Control Laboratory

6543 N. Burlington Avenue, Bldg 217, Portland, Oregon 97203 ■ Nick Fish, Commissioner ■ Dean Marriott, Director

Date: mm/dd/yyyy

Contact Name
Company Name
Mailing Address
Portland, OR Zip Code

RE: **WARNING NOTICE – # WN-14-XXX-39**
Enter Company Name and/or Location of Violation
Violation of PCC Chapter 17.39.040, Prohibited Discharge to the Storm System

Dear Contact Name:

On Date: mm/dd/yyyy staff from the City's Bureau of Environmental Services (BES) responded ... text describing nature and extent of the incident.

Violating Condition(s)

This letter serves as your official notice that the discharge is a violation of Portland City Code 17.39.040 and Administrative Rules, which prohibits the release of deleterious materials into the City's storm sewer and drainage system. This violation warrants the issuance of this warning-notice enforcement action.

There is no civil penalty associated with this action. Please note that future violations will escalate and are subject to monetary fines.

Required Corrective Action(s)

Describe the required actions, or state "none".

You may request an administrative review regarding this matter by submitting a written response to this office within 20 calendar days of the mailing date of this notice. Following reconsideration of the findings and enforcement action, the Bureau of Environmental Services will issue a final determination within 14 calendar days of the administrative review. The final determination will provide information about your right to subsequent appeal of this enforcement action.

Please consider PM Name or "me" your point of contact for issues surrounding this event. Please contact PM Name or "me" at Email address or Phone number for additional information or questions about this Warning Notice.

Sincerely,

ECD Staff Lead Name
ECD Staff Lead Title



CITY OF PORTLAND ENVIRONMENTAL SERVICES



Water Pollution Control Laboratory

6543 N. Burlington Avenue, Bldg 217, Portland, Oregon 97203 ■ Nick Fish, Commissioner ■ Dean Marriott, Director

Date: mm/dd/yyyy

Contact Name
Company Name
Mailing Address
Portland, OR Zip Code

RE: **Notice of Violation and Intent to Assess Civil Penalty**
NOV-14-XXX-39

Enter Company Name and/or Location of Violation

Violation of Portland City Code Chapter 17.39.040, Prohibited Discharge to the Storm System

Dear Contact Name:

On Date: mm/dd/yyyy, staff from the City's Bureau of Environmental Services (BES) responded ... text describing nature and extent of the incident.

Violating Condition(s)

This is your official notice that the City of Portland asserts that Responsible Party Name has violated Portland City Code (PCC) 17.39.040, which prohibits the release of deleterious materials into the City's storm sewer and drainage system. The release described above constitutes a Select Violation Classification violation of PCC Chapter 17.39.

Enclosed is a document entitled Notice of Violation and Notice of Intent to Assess Civil Penalty. The violations are described in Section III of the notice. Section IV lists the civil penalties associated with this violation notice. Section V outlines the City's authority to recover costs associated with the violation. Section VI refers to the portions of the BES Enforcement Program Administrative Rules and the City Code that describe your rights in response to this notice.

To request an administrative review regarding this matter, you must respond in writing within 20 calendar days of the mailing date of this notice. Failure to do so will result in a final determination of the assessed civil penalty and preclude your right to further appeal.

If you have any questions regarding this matter, please contact me at (503) 823-XXXX.

Sincerely,

ECD Staff Lead Name
ECD Staff Lead Title

CC: Matthew Criblez, BES Environmental Compliance Officer

Enclosure



CITY OF PORTLAND ENVIRONMENTAL SERVICES



Water Pollution Control Laboratory

6543 N. Burlington Avenue, Bldg 217, Portland, Oregon 97203 ■ Nick Fish, Commissioner ■ Dean Marriott, Director

Date: mm/dd/yyyy

Certified Mail # CERTIFIED MAIL RECEIPT #

IN THE MATTER OF

Company Name
Mailing Address
Portland, OR Zip Code

NOTICE OF VIOLATION & NOTICE
OF INTENT TO ASSESS CIVIL
PENALTY:

NOV-14-XXX-39

I. LEGAL AUTHORITY

The following findings are made regarding the violation of Responsible Party Name ("the Discharger") and this notice is issued pursuant to Section 17.39.040 of the City Code.

II. FINDINGS

1. On Date: mm/dd/yyyy, the Discharger ... text describing nature and extent of the incident.
2. The Discharger has released prohibited discharges containing pollutants into the storm sewer and drainage system of the City of Portland ("the City").
3. The Discharger is subject to the prohibitions, restrictions and limitations set forth in Chapter 17.39 of the City Code and the Administrative Rules authorized thereunder.

III. NOTICE

THEREFORE, BASED ON THE ABOVE FINDINGS, THE DISCHARGER IS HEREBY NOTIFIED THAT:

1. On Date: mm/dd/yyyy, the Discharger violated Section 17.39.040 of the City Code and Administrative Rules.

2. Upon receipt of this notice, the Discharger must:
 - a) Return immediately to compliance with all requirements of PCC Chapter 17.39 and the associated administrative rules.
 - b) Detail any other requirements here – e.g., additional and/or increased spill prevention. Or submittal of written report.
3. If the Discharger has not achieved compliance or the problem has escalated, further enforcement action will be considered.
4. Failure to comply with any requirement of this notice will constitute a further violation and may subject the Discharger to additional civil penalties. Each requirement set forth in this notice is a separate requirement and is enforceable as a separate violation.

IV. CIVIL PENALTY

Section 17.39.110 of the City Code authorizes the City to assess a civil penalty of up to \$10,000 per day for each violation of the City Code, Administrative Rules for Discharges to the City Storm Sewer and Drainage System, or permits issued under City Code.

Based on the foregoing violations, the City hereby assesses a civil penalty in the amount of \$ **(Enter the total civil penalty amount determined from the algorithm)** for the violation(s). The civil penalty is the sum of the Violation Class X base penalty of \$0.00 plus a gravity penalty of \$0.00 due to (briefly describe, in 2 sentences or less, the gravity criteria that contributed to the assessment).

The City will issue a final determination assessing civil penalties 20 calendar days after the mailing date of this notice unless, within that time, the Discharger requests an administrative review as provided in Section VI below.

V. COST RECOVERY

Section 17.39.110 of the City Code authorizes the City to recover all reasonable costs incurred by the City that are attributed to or associated with violations of City Code Chapter 17.39 or associated administrative rules.

The City may issue a Notice of Assessment of Costs to recover costs attributed to or associated with the violation(s) addressed in this notice.

VI. PROCEDURES FOR RESPONDING TO THIS NOTICE

The BES Enforcement Program Administrative Rules, which outline procedures for responses to this notice, can be obtained online via the City Auditor's Office website, at <http://www.portlandonline.com/Auditor/Index.cfm?a=154207&c=28044>. Also available electronically is Chapter 22.10 of the City Code, Appeals to Code Hearings Officer, which outlines procedures for appeal to the Code Hearings Officer: <http://www.portlandonline.com/Auditor/Index.cfm?c=28576>.

To request an administrative review regarding this matter, you must respond in writing within **20 calendar days** of the mailing date of this notice. Failure to do so will result in a final determination of the assessed civil penalty and preclude your right to further appeal.

VII. CONTACT INFORMATION

Please address all correspondence regarding this notice to:

ECD Staff Lead Name
City of Portland, Bureau of Environmental Services
Water Pollution Control Laboratory
6543 N Burlington Avenue
Portland, Oregon 97203-5452

Signed,

Program Manager Name
Environmental Program Manager